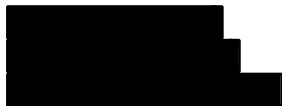




FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

KIN/145052

PRELIMINARY RECITALS

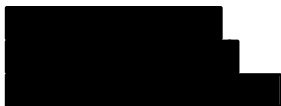
Pursuant to a petition filed November 05, 2012, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Perez-Pena Limited in regard to Kinship Care, a hearing was held on December 11, 2012, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly denied Kinship Care (KC) benefits to the Petitioner for AJ.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Kathleen O'Connell, Kinship Care Worker
Bureau of Milwaukee Child Welfare
1555 Rivercenter Drive
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is the great-grandmother of minor child AJ, age 4. Petitioner has cared for AJ since approximately September, 2012. AJ has lived at her house since February, 2011 but AJ's mother and 8 year old brother also lived with her until September, 2012. The Petitioner asked AJ's

mother to leave when she did not follow house rules. The 8 year old child sometimes stays with the Petitioner but also stays with his mother.

3. On September 12, 2012, the Petitioner applied for KC benefits for AJ.
4. On September 25, 2012, the agency conducted a home visit.
5. On October 1, 2012, the agency assessor spoke with AJ's mother by telephone. She currently does not have a permanent home and stays with various friends. She has no AODA or mental health issues, no history with CPS, no criminal record. She receives W-2 benefits, FoodShare benefits and medical assistance for herself and her 8 year old son who lives with her. She is employed part-time.
6. The Petitioner has contact with AJ at least on a weekly basis. She occasionally buys food or items for him.
7. The identity of AJ's father and his whereabouts are unknown.
8. On October 19, 2012, the agency denied KC benefits finding that AJ does not meet the criteria of a child in need of protective services and it is not likely that he will meet that criteria in the future.
9. On November 5, 2012, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

The Kinship Care benefit is a public assistance payment of \$220 per month per child paid to a qualified relative who bears no legal responsibility to support the child. In Wisconsin, this benefit replaces the former Non-Legally Responsible Relative (NLR) Aid to Families with Dependent Children (AFDC) payment (see, Wis. Stat. § 49.19). To be eligible for the payments thereunder, the relative must meet all of the conditions set forth in Wis. Stat. §§ 48.57(3m)(am)(1-5) or 48.57(3n)(am)(1-6). See also, Wis. Admin. Code ch. DCF 58.

The eligibility/review criteria for a relative who is a guardian under §48.977 versus a relative who is not a §48.977 guardian are different. There is no evidence in the record that the Petitioner is a §48.977 guardian.

For Kinship Care cases in which the relative is not a §48.977 guardian, all of the conditions listed in §48.57(3m)(am) must be met. The pertinent "conditions specified in par. (am)" here are as follows:

1. The kinship care relative applies to the county department or department for payments under this subsection and the county department or department determines that there is a need for the child to be placed with the kinship care relative and that the placement with the kinship care relative is in the best interest of the child.
2. The county department or department determines that the child meets one or more of the criteria specified in s.48.13 or 938.13 or that the child would be at risk of meeting one or more of those criteria if the child were to remain in his or her home.

Id., (3m)(am)1,2.

The agency testified that the Petitioner's residence is suitable for AJ. The Petitioner takes good care of him and has created a safe and stable environment for him. Accordingly, the placement satisfies the "need for the child's placement" criterion described at Wis. Stats. §48.57(3m)(am)1. However, the agency's basis for denial was that the child does not meet one of the criteria at Wis. Stat. §48.13 and therefore does not meet the condition in §48.57(3m)(am)2.

The criteria which must be met in § 48.13 to be a child in need of protection or services include:

48.13 Jurisdiction over children alleged to be in need of protection or services. ...

(2) Who has been abandoned; . . .

(10) Whose parent, guardian or legal custodian neglects, refuses or is unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of the child;

(10m) Whose parent, guardian or legal custodian is at substantial risk of neglecting, refusing or being unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of the child, based on reliable and credible information that the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to provide necessary care, food, clothing, medical or dental care or shelter so as to endanger seriously the physical health of another child in the home; . . .

Wis. Stats. §48.13.

The agency noted that AJ's mother has employment, receives W -2 benefits, FoodShare benefits and medical assistance. She does not currently receive those benefits for AJ but there is no reason that she cannot put him on her case. AJ's brother stays with his mother most of the time though he occasionally stays with the Petitioner. Though AJ's mother does not currently have a stable residence, she does have friends with whom she stays.

The Petitioner is concerned for AJ's welfare if he stays with his mother since she does not have a stable residence.

There is no evidence presented to demonstrate that AJ's mother has abandoned, neglected, refuses or is unable to provide necessary care, food, clothing, medical or dental care to AJ and his brother. Though her lack of a stable residence presents some risk of being able to provide necessary shelter, thus far AJ's mother has been able to find adequate places to stay. She also has the ability to stay with the Petitioner if she decides to obey the Petitioner's house rules. Therefore, I do not see that there is a "substantial risk" of being unable to provide shelter. Likewise, AJ's mother has provided for the needs of AJ's brother and there is nothing to demonstrate that she would not do likewise for AJ.

The Petitioner clearly provides AJ with a stable and safe residence and provides well for his needs. However, there is insufficient evidence to conclude that AJ meets the criteria in § 48.13 as a child in need of protection or services.

CONCLUSIONS OF LAW

The agency properly denied KC benefits to the Petitioner for AJ.

THEREFORE, it is

ORDERED

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

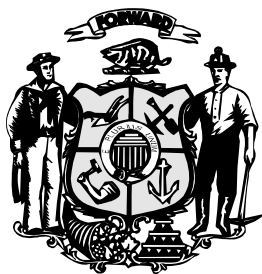
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of February, 2013

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 22, 2013.

Perez-Pena Limited
DCF - Kinship Care
DCF - Kinship Care